



July 9, 2019

Via Electronic Mail
Lisa.Vest@delaware.gov

Re: DCRC Comments on Proposed Amendments to Regulations Governing Delaware's Coastal Zone

Dear Ms. Vest:

The Delaware City Refining Company LLC ("DCRC") offers comments on the following sections of the proposed amendments to Regulations Governing Delaware's Coastal Zone published under Register Notice SAN#2017-17.

3.0 Definitions – "Catastrophic Incident"

The proposed definition of "catastrophic incident" is not consistent with being "catastrophic", by any reasonable definition of the word. Any unplanned release of a hazardous substance (even less than a published reportable quantity) or even any unplanned release of "hydrocarbon" does not even make an incident significant, much the less "catastrophic". The U.S. Department of Homeland Security defines a "catastrophic incident" as follows:

A catastrophic incident, as defined by the National Framework, is any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions. A catastrophic incident could result in sustained national impacts over a prolonged period of time; almost immediately exceeds resources normally available to State, local, tribal, and private-sector authorities in the impacted area; and significantly interrupts governmental operations and emergency services to such an extent that national security could be threatened. All catastrophic incidents are Incidents of National Significance.
<https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Response-Policy-CG-5R/Office-of-Incident-Management-Preparedness-CG-5RI/US-Coast-Guard-Office-of-Search-and-Rescue-CG-SAR/CG-SAR-2/Catastrophic-Incident-SAR/>

DCRC proposes that DNREC either adopts a definition more appropriate for the term "catastrophic incident" (such as the Homeland Security definition give above), or rename the term to be more consistent with the definition proposed. DCRC suggests the term be renamed "Significant Incident" and defined as follows:

*"**Catastrophic Significant Incident**" means any occurrence that causes an unplanned shut down or process upset that causes an unplanned release of a "hazardous substance," in excess of a reportable quantity as defined-specified in the Comprehensive Environmental Response, Compensation and Liability Act Section 101(14), or hydrocarbon, whether the occurrence is natural, such as extreme weather, or resulting from human action, such as error, terrorism, vandalism, or other causes.*

3.0 Definitions – "Pollution"

The proposed definition refers to the definition of "environmental release, as defined at Title 7 §6002(19). Title 7 §6002 makes a distinction between releases, per (19) and "pollution". For example, "air pollution" in Title 7 §6002 (3) recognizes that a release must be of some significance to rise to a level to properly be characterized as "pollution".

(3) "Air pollution" means the presence in the outdoor atmosphere of 1 or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interferes with the enjoyment of life and

property within the jurisdiction of this State, excluding all aspects of employer-employee relationships as to health and safety hazards. (**emphasis added**)

As such, DCRC believes the proposed definition of "Pollution" to be inconsistent with Title 7 §6002 and should be revised as follows:

"Pollution" means an environmental release, as defined at Title 7 §6002(19), ~~or which results in~~ adverse impacts on human populations, air and water quality, land, wetlands, flora and fauna, or ~~to~~ produces dangerous or onerous levels of glare, heat, noise, vibration, radiation, electromagnetic interference ~~and or~~ obnoxious odors.

3.0 Definitions – "New Activity"

Section 6.1.3 requires a Coastal Zone permit for any "new activity", with the exception of those listed in Section 5.0. However, the term "new activity" is not defined in the 3.0 Definitions section of the Regulations. DCRC believes that DNREC should take the opportunity afforded by these revisions to clarify a term that has caused longstanding confusion in the process of Coastal Zone permitting activities.

The Coastal Zone Act itself (see §7004(a)) describes which uses are allowable by permit: "...expansion or extension of nonconforming uses...and all expansion or extension of uses for which a permit is issued pursuant to this chapter, are likewise allowed only by permit."

As such, DCRC believes that a "new activity" should be defined, consistent with CZA and the Regulation as:

"New Activity" means an expansion or extension of any nonconforming use or use authorized by a permit issued pursuant to these regulations. An expansion is considered an increase in the overall processing capability of a use or facility. An extension is considered to be an increase in the geographic footprint of a use of facility.

8.6.2 Permit Renewal

DCRC proposes to delete the first sentence of this section. The qualifier in 8.6.2 that only a permittee "who has a record of compliance with its permit may submit a request for permit renewal" is vague and uncertain as to intent. Larger facilities routinely self-report deviations to permit conditions to the Department as required under various regulatory programs. Do such reports constitute a lack of a "record of compliance"? A permittee's record of compliance, and history of permit violations is already specified in 8.6.2.2 as factors the Secretary will consider in reviewing an application for permit renewal. As such, DCRC believes the first sentence in 8.6.2 to be unnecessary.

8.6.3.1 & 2 Minor & Major Modifications

The proposed amendments require a "major modification" request be submitted for any change to ownership or control. The Department has existing procedures in place that requires new owners to submit an Environmental Permit Application Background Statement. It is reasonable that once these processes are completed, the new ownership or control could be handled via the proposed Minor Modification procedures for administrative matters.

9.1 Offset Proposal Requirements

Section 9.1.1 requires any "negative environmental impact" to be addressed by an offset proposal. However, the term "negative environmental impact" is not defined. In order to avoid confusion and unnecessary ambiguity, and to be consistent with the required activities under Section 8.2 ("Environmental Impact Statement"), DCRC would propose the term "negative environmental impact" be specifically defined to constitute adverse impacts identified pursuant to factors required to be considered by Sections 8.2.1 through 8.2.10 of the Environmental Impact Statement requirements.

Section 9.1.5 proposes to delete the requirement for the Secretary to make a preliminary determination as to the sufficiency of offsets proposed. With the increased requirements being proposed relative to offset proposals, DCRC does not believe it necessary or prudent to delete this requirement. The requirement offers companies some certainty as to the timeline for the evaluation of offset proposals, and it is unclear how this has been a problem for the Department to meet in the past.

DCRC also suggests the word "unable" in 9.1.6 be changed to "not feasible", consistent with 9.1.7.

12.0 Permit Recordkeeping and Reporting

There are several references in this sections to reports that must be submitted annually with due dates tied to the anniversary of permit issuance. For clarity and to ensure appropriate time is available to compile these reports, DCRC suggests that each report be given an appropriate fixed due date for information to be provided for the previous calendar year. March 1 would be a suggested appropriate date for each of these annual reports.

Also, Section 12.1.4 requires immediate notification to the Department "*of any violation of any term or condition of the permit.*" DCRC believes that this is an onerous requirement and unnecessary in most cases. DNREC already has promulgated regulations (*DE Admin Code 1203 – Reporting of a Discharge of a Pollutant or Air Contaminant*) concerning reporting of releases to the Department that may pose a threat to public health or welfare. This regulation is not obviated by the issuance of a Coastal Zone permit. Also, air or water release events would, in most cases, be covered under separately issued permits issued by the appropriate branch of DNREC, and these permits would have their own compliance reporting requirements.

DCRC believes **other** potential permit violations (recordkeeping oversights, missed inspections, etc.) do not rise to the level to warrant immediate notifications. Further, some permit violations may be discovered at some point after the time of violation (a missed recordkeeping requirement, for example), so any notification requirement should appropriately be tied to the time of discovery, not the time of violation. As such, DCRC believes a more appropriate time frame for the reporting required under 12.1.4 be 30 days after discovery rather than immediate.

Please contact me if you have any questions at (302) 834-6053 or Thomas.godlewski@pbfenergy.com.

Sincerely,

A handwritten signature in blue ink, reading "Thomas S. Godlewski, Jr.", with a stylized, cursive script.

Thomas S. Godlewski, Jr.
Environmental Manager